

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18741.1. Permanent Ban. Participating in the Same Proceeding.

(a) The prohibitions of Government Code sections 87401 and 87402 apply to any state administrative official if all of the following criteria are met:

(1) The official has permanently left state service or is on a leave of absence.

(2) The official is compensated, or is promised compensation, for making an appearance or communication, or for aiding, advising, counseling, consulting, or assisting in representing another person, other than the State of California, in a judicial, quasi-judicial or other proceeding. However, a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services are not prohibited or limited by this section.

(3) The official makes an appearance or communication before any officer or employee of any state administrative agency for the purpose of influencing, as defined in 2 Cal. Code Regs. section 18746.2, a judicial, quasi-judicial or other proceeding, including but not limited to any proceeding described in 2 Cal. Code Regs. section 18202, subdivisions (a)(1)-(a)(7).

(4) The judicial, quasi-judicial or other proceeding includes any proceeding in which the official participated personally and substantially by making, participating in the making, or influencing of a governmental decision, as defined in 2 Cal. Code Regs. sections 18702.1-18702.4, but excluding any proceeding involving the rendering of a legal advisory opinion not involving a specific party or parties. Any supervisor is deemed to have participated in any proceeding that was "pending before," as defined in 2 Cal. Code Regs. section 18438.2, subdivision (b), the official's agency and that was under his or her supervisory authority. For

purposes of this regulation, a proceeding is under a supervisor's "supervisory authority" if the supervisor:

(A) Has duties that include primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted; or

(B) Has direct supervision of the person performing the investigation, review, or other action involved in the proceeding including, but not limited to, assigning the matter for which the required conduct is taken; or

(C) Reviews, discusses, or authorizes any action in the proceeding; or

(D) Has any contact with any of the participants in the proceeding regarding the subject of the proceeding.

"Supervisory authority" does not include a supervisor, at a higher level within the agency's chain-of-command than the supervisor identified in subsection (a)(4)(A) above, with responsibility for the general oversight of the administrative actions or functions of a program where the responsibilities concerning the specific or final review of the proceeding are expressly delegated to other persons in the agency's structure (i.e. supervisors under subsection (a)(4)(A) above) unless the higher level supervising official has actual involvement in the proceeding as set forth in subsections (a)(4)(C) or (D) of this regulation.

(5) The judicial, quasi-judicial or other proceeding is the same proceeding in which the official participated.

Comment: Also see *In re Lucas* (2000) 14 FPPC Ops. 15.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87401 and 87402, Government Code.

HISTORY

1. New section filed 2-19-99; operative 2-19-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 8).
2. Editorial correction moving section 18741.1 from article 2 to article 2.5 (Register 2001, No. 11).
3. Amendment filed 10-6-2005; operative 11-5-2005 (Register 2005, No. 40).